* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P(C)13444 OF 2005**

% **Judgment reserved on: September 03, 2007**
Judgment delivered on: October 5, 2007

Randhir Singh ..... Petitioner
Through: Mr. A. S. Chauhan, Advocate

versus

N.C.T of Delhi ..... Respondent
Through: Ms.Avnish Ahlawat, Advocate.

CORAM
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J.

1. Petitioner has by way of this writ petition impugned the order dated 29.4.2005 passed by the Central Administrative Tribunal (Tribunal for short) whereby the OA preferred by the Petitioner before it came to be dismissed.

Brief Facts

2. The petitioner had joined the Indian Army during the National Emergency declared as a result of the Chinese aggression, on 2.11.1962. He belonged to the Jat Regiment and participated in the war for varying periods between 1.6.64 and 20.1.66. He was awarded

"Sainya Sewa Medal with Clasp" for his services. After having served in a regular term for a little over 4 years the petitioner sought discharge from the army on compassionate grounds. He was discharged on 31.12.1966. On account of his short tenure, he was not entitled to and so was not granted any pensionary benefit. Thereafter he completed his B.Ed. and joined a Haryana Government School as a TGT in the year 1969 and continued to so work till 1972 when, on 30th October, 1972 he joined the Government Boys Senior Secondary School, Chhawla, New Delhi as a TGT under the Directorate of Education, Govt. of NCT of Delhi. At the time of his appointment he was given age relaxation by deducting the period of 4 years, 1 month and 30 days spent in the Indian Army. This relaxation was granted pursuant to the letter dated 25.3.1980 written by the Dy. Director of Education, Distt.-West.

3. Thereafter on 21.9.1995 the applicant submitted a representation to the Director of Education claiming grant of increments and consequent benefits on the basis of war service rendered by him. However, the said representation was not responded to. Consequently the petitioner preferred OA No.148/2002 before the Tribunal which was disposed of with a direction to the respondents to decide the said representation of the Petitioner. The said representation was considered and rejected vide order dated 18.3.2002. The petitioner then impugned the said order rejecting his

representation before the Tribunal by filing OA No.1880/2004 which was also dismissed vide order dated 29.4.2005. It is this order of the Tribunal which is impugned before us.

4. The Tribunal rejected the claim of the petitioner by holding that Ex-Servicemen (Reservation of vacancies in the Central Civil Services and posts, Class III & Class IV) Rules, 1974 do not confer any benefit of the past service for the purpose of fixation of pay and pension. Rule 20 of CCS(Pension) Rules, 1972 was also held as inapplicable to the petitioner as declaration of emergency in 1962, in its opinion, did not imply that war had been declared and therefore services rendered by petitioner were not war services.

5. Before us the petitioner has assailed the aforesaid order on the ground that the Tribunal failed to consider and deal with the provisions contained in G.I.M.F Memo No.F.3(71)EV(A)/63, dated 1st October 1964.

6. The respondents having failed to file their counter affidavit in opposition despite numerous opportunities,their right to file the same was closed. However, we have gone through their reply filed before the Tribunal.

7. The aforesaid O.M dated 1.10.1964, on which the petitioner places reliance provides:

> "A question has arisen as to whether the Enlisted/Commissioned Military Service which is shown as non-pensionable by the Defence Authorities in the Certificate of Verification of

> Military Service, should count towards civil pension in the case of persons who are permanently appointed to civil posts.
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> The position is that, in the Defence Services there are no non-pensionable establishments and the service officers/personnel are either on regular or non-regular terms. Those who are on regular terms are entitled to pension/gratuity after rendering the prescribed periods of service and others who are not on regular terms are entitled to gratuity as admissible under the rules/orders in accordance with which they are engaged. Non-regular Military service when followed by service on regular terms counts for Military pension. In the circumstances, the service which is shown as non-pensionable/war- time engagement is in fact non-regular (purely temporary) military service and will be allowed to count towards civil pension.(emphasis supplied)"

8. As per the said O.M non-pensionable/purely temporary service will count towards civil pension where the said service is followed by permanent appointment to a civil post. The purpose of the O.M was given due recognition to the military service rendered by the citizens of the nation, when the nation was faced with an emergency in the face of external aggression. At that time the country needed youth who could defend its borders, even at the cost of their lives and careers. Keeping the objective sought to be achieved by the said O.M, it does not stand to reason that regular officers who took discharge from army, and were therefore not admitted to pension should be deprived of such an advantage. If the aforesaid O.M is interpreted to exclude the regular term military men

from its application, it would be rendered discriminatory and arbitrary since the regular term military men who joined the military at the time of external aggression were similarly placed as those enlisted/commissioned in military service and, for the purpose of being granted the aforesaid benefit, constituted one class. The Apex Court in ***Raj Pal Sharma & Ors. V. State of Haryana & ors***, 1985(supp.) SCC 72 observed as follows:-

> "All those persons released from military service constitute one class and it is not possible to single out certain persons of the same class for differential treatment. There appears to be no reasonable classification between the persons who were released on compassionate grounds and those who were released on other grounds and in this respect the petitioners have been deprived of the equal opportunity....."

9. The above quote was cited with approval in ***Dhan Singh & Ors V. State of Haryana & Ors***, C.A.No.1060 of 1990 decided by the Hon'ble Supreme Court on 5.12.1990. The Court made certain significant observations with reference to young citizens of India, who had joined the armed forces during the Chinese aggression, which would be relevant for our purpose:

> "*on account of the external aggression by the Chinese forces in the Indian territory, the emergency was imposed by the President of India in 1962. In order to attract young men to join military service at that critical juncture, the Central Government and the State Governments issued different circulars and advertisements on the radio and in the press promising certain benefits to be given to those young men who join the military service.*

The young persons who have joined the military service during the national emergency and those who were already in service and due to exigencies of service had been compelled to serve during the emergency form two distinct classes. The appellants and the petitioners who joined the army before the proclamation of emergency had chosen the career voluntarily and their service during emergency was as a matter of course. They had no option or intention of joining the government service during the period of emergency as they were already serving in the arm. The persons who enrolled or commissioned during the emergency, on the other hand, had on account of the call of the nation joined the army at that critical juncture of national emergency to save the motherland by taking a greater risk where danger to the life of a member of the armed forces was higher. They include persons who could have pursued their studies, acquired higher qualifications and joined a higher post and those who could have joined the government service before attaining the maximum age prescribed and thereby gained seniority in the service. Foregoing all these benefits and avenues, they joined the army keeping in view the needs of the country and assurances contained in conditions of service in executive instructions. The latter form a class by themselves and they cannot be equated to those who joined the army before the proclamation of the emergency. Benefits had been promised to such persons who heeded to the call of the nation at that critical juncture. Older man by joining the military service lost chance of joining other government service and when he joins such service on release from the army younger man had already occupied the post. To remove the hardship, the benefit of military service was sought to be given to those young persons who were enrolled/commissioned during the period of emergency forgoing their job opportunities."

10. The timing of the issuance of the aforesaid O.M, more so when the O.M itself was brought out after the Chinese aggression, apparently to provide succor to those enlisted with army who had not got any pensionary benefit.

11. The finding of the Tribunal that the petitioner had not rendered war service is contrary to the record inasmuch as the certificate of service issued to the petitioner by the Indian Army gives complete details of the war services rendered by him between 1.6.1964 and 20.1.1966.

12. Accordingly, the impugned order dated 29.4.2005 is set aside and the respondents are directed to take into consideration the past military service of the petitioner of 4 years, 1 month and 30 days into account for the purpose of fixation of his pension.

13. Parties are left to bear their own costs.

(VIPIN SANGHI)
JUDGE

(A.K.SIKRI)
JUDGE

October 5, 2007
aj/as